No. 97-235

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1996

LEECH LAKE BAND OF CHIPPEWA INDIANS,

Petitioner,

vs.

CASS COUNTY, MINNESOTA; SHARON K. ANDERSON, in her official capacity as Cass County Auditor; MARGE L. DANIELS, in her official capacity as Cass County Treasurer; STEVE KUHA, in his official capacity as Cass County Assessor; JAMES DEMGEN, in his official capacity as Cass County Commissioner; JOHN STRANNE, in his official capacity as Cass County Commissioner; GLEN WITHAM, in his official capacity as Cass County Commissioner; ERWIN OSTLUND, in his official capacity as Cass County Commissioner; VIRGIL FOSTER, in his official capacity as Cass County Commissioner,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO PETITIONER'S CONDITIONAL CROSS PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Is land owned in fee by an Indian tribe accorded a higher level of immunity from taxation than land owned in fee by individual members of the tribe?

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RESPONDENTS' BRIEF IN OPPOSITION TO PETITIONER'S CONDITIONAL CROSS PETITION FOR WRIT OF CERTIORARI

Respondents[1] ("Cass County" or "the County") respectfully request that this Court deny the Conditional Cross Petition for Writ of Certiorari filed by Petitioner Leech Lake Band of Chippewa Indians ("the Band") seeking review of the judgment of the Court of Appeals for the Eighth Circuit in this case.

STATEMENT OF THE CASE

Cass County's Statement of the Case is printed at pages 2-6 of its Petition for Writ of Certiorari. The court of appeals' description of the case is found in 108 F.3d at 821-24 and is reproduced at App. 2-8 of the County's Petition.

REASONS FOR DENYING THE CONDITIONAL CROSS PETITION

In addition to its Conditional Cross Petition, the Band has filed a Brief in Opposition to Cass County's Petition for Writ of Certiorari in this case. The Band states that it is willing to accept the decision of the court of appeals without further appeal if the County's Petition is denied. Conditional Cross Petition at 2. The Band contends, however, that if the Court grants the County's

[1] The Respondents include Cass County, Minnesota, and eight county officials.

Petition, it should also grant the Band's Conditional Cross Petition in order to rule on its assertion that "[T]he Court of Appeals should have granted the full relief requested by the Band in this lawsuit – an order declaring that *all* lands owned in fee by the Band within its reservation, whatever the title origin and whenever acquired, are immune from county taxation.[2] Conditional Cross Petition at 2 (emphasis added). The basis for this contention is the Band's claim that Indian tribes themselves enjoy a higher level of immunity from taxation than do individual tribal members. Conditional Cross Petition at 2. For the reasons discussed below, the Band's Conditional Cross Petition should be denied.

ARGUMENT

THE ISSUE PRESENTED IN THE CONDITIONAL CROSS PETITION DOES NOT MERIT REVIEW.

The lands at issue in this case are all reservation lands owned by the Band in fee. Cass County's Petition, App. 2. The fee lands at issue in the *Yakima* decision, which is controlling on the issue in this case, were owned both by the Yakima Nation itself and by individual members of the Tribe. *County of Yakima v. Yakima Indian Nation,*

[2] The court of appeals held that thirteen parcels allotted under section 3 of the Nelson Act, which incorporated the allotment provisions of the General Allotment Act, were subject to taxation; but that seven parcels originally sold as "pine lands" (sections 4 and 5 of the Nelson Act) and one parcel sold under the Homestead Act (pursuant to section 6 of the Nelson Act) were exempt from taxation. Cass County's Petition, App. 22-3.

502 U.S. 251, 256, 264 (1992). Notwithstanding that in *Yakima* this Court did not draw a distinction, with respect to the taxation/immunity issue in that case, between land owned by the Yakima Nation and land owned by individual tribal members, the Band asserts in this case that:

> The separate governmental immunity of Indian governments provides a special barrier to taxation, a barrier that does not protect individual Indians and lands patented to them in fee under the General Allotment and Burke Acts.

Conditional Cross Petition at 4.

The Band does not, however, cite a single decision of either this Court or any court of appeals holding that the immunity from taxation of Indian tribes is greater than that of tribal members. Thus, not only is there no split of authority on the issue raised by the Conditional Cross Petition, there is no authority at all upholding the Band's position.

To the contrary, the decisions of this Court involving Indian taxation issues, both before and after the *Yakima* decision, are consistent with both *Yakima* and the Eighth Circuit decision in this case. With respect to tax immunity, the Court has treated land owned by tribes the same as land owned by tribal members. *See, e.g., Oklahoma Tax Commission v. Chickasaw Nation*, 515 U.S. ___, 115 S. Ct. 2214, 2217, 2220 (1995); *California v. Cabazon Tribe of Mission Indians*, 480 U.S. 202, 215 n. 17 (1987) (and cases discussed therein). There is, therefore, no basis in this Court's decisions from which a distinction can be drawn between the tax immunity of Indian tribes and that of tribal members.

The *Chickasaw Nation* case is illustrative of this point. It involved two separate taxation issues: (1) whether the State of Oklahoma could properly impose an excise tax on fuel sold by the Chickasaw Nation within the reservation, and (2) whether the state could properly impose an income tax on individual members of the Tribe who resided outside the reservation. *Id.* at 2217. The Court struck down the excise tax and upheld the income tax, not because the Tribe possessed a "special barrier to taxation" not available to its members, but because the Court construed the applicable treaty[3] to provide immunity from taxation only within the reservation. *Id.* at 2220-24.

In reality, the Band's contention that it enjoys a higher level of tax immunity than do its members rests entirely on the implicit argument that its immunity from state and local taxation is on a level with that of the United States Government, Conditional Cross Petition at 3. That argument is not sustainable. Rather, this Court has described Indian tribes, both in this and in the last century, " 'as having a semi-independent position . . . not as States, not as nations, not as possessed of the full attributes of sovereignty, but as a separate people, with

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[3] The relevant treaty provides in part that: "[N]o Territory or State shall ever have a right to pass laws for the government of the [Chickasaw] Nation of Red People and their descendants . . . but the U.S. shall forever secure said [Chickasaw] Nation from, and against, all [such] laws. . . . " Treaty of Dancing Rabbit Creek, Sept. 27, 1830, Art. IV, 7 Stat. 333-34.

the power of regulating their internal and social relations. . . . ' " *McClanahan v. State Tax Commission of Arizona*, 411 U.S. 164, 173 (1973) (quoting *United States v. Kagama*, 118 U.S. 375, 381-2 (1886)). Given this limited status of tribal sovereignty, the decisions cited by the Band (Conditional Cross Petition at 3-4) which recognize tribal sovereignty in a variety of different circumstances by no means compel, or even suggest, the conclusion that Indian tribes enjoy the same level of tax immunity accorded fully sovereign entities such as the United States Government.

Finally, the Band suggests that the issue of heightened tax immunity for tribally-owned land warrants review because it was "never fully briefed or argued" in *Yakima*. Conditional Cross Petition at 4. The issue was briefed and argued to the Eighth Circuit Court of Appeals in this case, and like this Court's decision in *Yakima*, the Eighth Circuit did not distinguish between the tax immunity afforded tribally-owned fee land and that available to fee land owned by tribal members. Even if the Court were to conclude, despite the solid line of decisions implicitly rejecting the Band's theory of tribal tax immunity, that the issue should be explored more fully, it is hardly appropriate for it to be resolved expressly for the first time by this Court.

CONCLUSION

For the foregoing reasons the Band's Conditional Cross Petition should be denied.

Dated: September 8, 1997

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